STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner **File No. 85596-001**

v

Blue Cross and Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 28th day of December 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 5, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The initial request was incomplete. After additional information was provided, the Commissioner accepted the request on October 29, 2007.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on November 7, 2007.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM Community Blue Group Benefits Certificate (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

The Petitioner, who lives in XXXXX, had blood work on September 12, 2006, ordered by XXXXX. The laboratory studies were performed by XXXXX. The total charge was $270.00. BCBSM paid a total of $35.80 for two tests.

The Petitioner appealed BCBSM's payment amount. BCBSM held a managerial-level conference on August 30, 2007, and issued a final adverse determination the same day.

III
ISSUE

Is BCBSM required to pay an additional amount for the services provided by XXXXX?

IV
ANALYSIS

Petitioner's Argument

Laboratory tests that the Petitioner says were an integral part of his treatment for ulcerative colitis were initially rejected by BCBSM because XXXXX is an out-of-network provider. Later, BCBSM paid a total of $35.80 of the $270.00 charged for these services.

The Petitioner understands that XXXXX is not in the BCBS network, but says they are the only laboratory in the country that performs the XXXXX metabolites test. This test is used to monitor his thiopurine (6-MP) therapy to make sure that the metabolite levels in his system are within therapeutic limits. If the levels are too high, the Petitioner could be in serious danger of liver damage or other problems. The Petitioner has been on 6-MP for several years due to his ongoing battle with ulcerative colitis.

The Petitioner believes that BCBSM is required to pay significantly more for his laboratory tests provided by XXXXX.

BCBSM's Argument

BCBSM says it correctly paid for the services the Petitioner received from a nonparticipating provider. Section 4 of the certificate, *Coverage for Physician and Other Professional Services,* explains that BCBSM pays an "approved amount" for physician and other professional services -- the certificate does not guarantee that charges will be paid in full. In addition, since XXXXX does not participate with BCBSM, it is not required to accept BCBSM's approved amount as payment in full.

BCBSM has not established a specific "approved amount" for the XXXXX metabolites test because it is a proprietary test that is only done by XXXXX and XXXXX does not participate with BCBSM. Instead, BCBSM looked at similar tests for which it has established approved amounts and decided that the test the Petitioner had most nearly corresponded to pathology and laboratory CPT code 82491, "Chromatography, quantitative, column (eg, gas, liquid or HPLC); single analyte not elsewhere specified, single stationary and mobile phase." BCBSM's maximum payment for CPT code 82491 is $17.90 so it paid a total of $35.80 as its approved amount for the two tests.

BCBSM points out that there is no difference in the amount it reimburses participating or nonparticipating provider. Both participating and nonparticipating providers receive BCBSM's approved amount. The difference is that participating providers have entered into a contractual agreement with BCBSM to accept the approved amount as total reimbursement for covered services provided to a member. On the other hand, nonparticipating providers do not have to accept the approved amount as payment in full and consequently may choose to bill the member.

BCBSM understands that these laboratory tests were necessary because of the Petitioner's condition. However, since XXXXX does not participate with BCBSM (or a local Blue Cross Blue Shield plan) it has a right to bill the Petitioner for the difference between the amount charged and the amount BCBSM calculated as its approved amount in this situation.

BCBSM contends that it has paid the proper amount for the Petitioner's care by a nonparticipating provider and is not required to pay more.

Commissioner's Review

The certificate describes how benefits are paid. It explains that BCBSM pays an "approved amount" for physician and other professional services. The approved amount is defined in the certificate as the "lower of the billed charge or [BCBSM's] maximum payment level for a covered service." Participating providers agree to accept the approved amount as payment in full for their services. Nonparticipating providers have no agreement with BCBSM to accept the approved amount as payment in full and may bill for the balance of the charges.

Since BCBSM did not have a maximum payment level established for the XXXXX metabolites test, the Commissioner finds that it was reasonable under the circumstances for BCBSM to use the maximum payment level for a similar or equivalent test to pay for the Petitioner's test.

It is unfortunate that the Petitioner was not able to use a participating laboratory. Nevertheless, there is nothing in the terms and conditions of the Petitioner's certificate that requires BCBSM to pay more than an approved amount to a nonparticipating provider, even if no participating provider was available. The certificate also explains this (on pages 4.25- 4.27):

> If the nonpanel provider is **nonparticipating**, you will need to pay most of the charges yourself. Your bill could be substantial….
>
> **NOTE**: Because nonparticipating providers often charge more than our maximum payment level, our payment to you may be less than the amount charged by the provider.

BCBSM paid a reasonable approved amount (its maximum payment level for an appropriately similar test) for the Petitioner's laboratory services. The Commissioner finds that BCBSM has correctly paid for the Petitioner's laboratory tests according to the terms of the certificate and is not required to pay more.

V
ORDER

BCBSM's final adverse determination of August 30, 2007, is upheld. BCBSM is not required to pay an additional amount for the Petitioner's September 12, 2006, lab tests.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.